

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2007-17-EC - ORDER NO. 2007-416  
JULY 2, 2007

IN RE: Mr. James Tarmann,	)	ORDER GRANTING
	)	MOTIONS TO DISMISS
Complainant,	)	
	)	
v.	)	
	)	
Duke Energy Carolinas, LLC and BellSouth	)	
Telecommunications, Inc. d/b/a AT&T South	)	
Carolina,	)	
	)	
Defendants	)	

This matter comes before the Public Service Commission of South Carolina (the “Commission”) on Motions to Dismiss filed by Duke Energy Carolinas, LLC (“Duke”) and BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina (“AT&T”) in response to allegations initiating this proceeding from James Tarmann. These allegations are contained in a letter from Mr. Tarmann filed with the Commission on January 8, 2007, stating that on behalf of himself and “on behalf of area residents,” he requests a “hearing for a change in service providers for our area”, claiming that neither Duke nor AT&T wish to service his area. His Complaint concludes that the two companies have abandoned their lines. For the reasons stated below, the Motions to dismiss this claim are granted.

Duke and AT&T filed Answers/Motions to Dismiss in response to Mr. Tarmann's letter. Duke denies abandoning its electric lines in Mr. Tarmann's service area, and, in fact, states that Mr. Tarmann continues to receive electric service from Duke at his home address. Abandonment of service by an electric utility is addressed by S.C. Code Ann. § 58-27-1290 (Supp. 2006). This provision states in pertinent part that:

No electrical utility shall abandon all or any portion of its service to the public, except for ordinary discontinuance of service for nonpayment of undisputed charges in the usual course of business, unless written application is first made to the commission for the issuance of a certificate authorizing the abandonment, and until the commission in its discretion issues a certificate after a public hearing of all parties appearing to the commission to be interested.

However, Duke notes that Mr. Tarmann served a Notice of Trespass on that Company, which prevents Duke from servicing its lines and equipment. (Further, Duke also notes that it would provide service to the complaint address, an address different from Mr. Tarmann's home address, if application for service is made and service can be established without violating the Trespass Notice.) As a result, Mr. Tarmann has constructively abandoned his own service to the extent that the Trespass Notice prevents Duke from maintaining its lines and equipment on his property. Therefore, the Commission finds that the principle of abandonment does not apply to Duke in this case. Moreover, according to 26 S.C. Code Ann. Regs. 103-342 (a) and (f) (Supp. 2006), Duke is within its rights to terminate service without notice if it determines that conditions are dangerous, and may also terminate service if the customer denies the electric utility "reasonable access to its equipment."

AT&T also filed a Motion to Dismiss, citing a Notice of Trespass served on that Company as well as concern for the welfare of its employees. Indeed, AT&T states that when employees attempted to perform work near Tarmann's property he "cursed at them, made derogatory remarks, and said that he intended to 'make [AT&T] suffer like they've made me suffer...'" AT&T indicates that this behavior caused at least two of these workers to fear for their personal safety. Because of its inability to access the Tarmann property and concern for its employees, AT&T states that it discontinued service.

The Commission notes that AT&T is justified in this action under the regulations governing the telecommunications industry. Similar to the provisions of 26 S.C. Code Ann. Regs. 103-342 as noted above, 26 S.C. Code Ann. Regs. 103-625 allows a telecommunications utility to discontinue service without notice when it determines that conditions are dangerous, and also allows discontinuance of service when the utility is denied reasonable access to its equipment. The Company's filing shows that both circumstances are present in this case. Moreover, Tarmann suffers no hardship from AT&T discontinuing his service, since no legal impediment to receiving telecommunications services from another company exists. As stated by AT&T, the telecommunications market is highly competitive, and service can be requested from any number of other providers.

Additionally, no other customers are affected by AT&T's decision to no longer serve Tarmann in this essentially private dispute. To this end, the record shows that, although Mr. Tarmann purports to submit his request "on behalf of area residents," he has not submitted a petition signed by area residents or otherwise identified any area

residents on whose behalf he is purporting to act. Further, even if there was such evidence, Mr. Tarmann may not represent other individuals or a group of other individuals, because he is not an attorney authorized to practice law in the State of South Carolina. *See* 26 S.C. Code Ann. Regs. 103-804 (T) (April 27, 2007).

In Mr. Tarmann's response to the Answers/Motions to Dismiss, he cites prior Commission Orders relating to the maintenance of the lines owned by Duke and AT&T and states that both companies filed Notices of Compliance with these Orders. Mr. Tarmann alleges inadequate service by both Companies and renews his request for a change in service providers. However, nothing in Tarmann's response adds substantively to his initial complaint against the companies, and the Commission finds that the principle of abandonment codified in Section 58-27-1250 of the South Carolina statutes fails to apply to AT&T just as it fails to apply to Duke.

The Office of Regulatory Staff (ORS) submitted a response to Mr. Tarmann's request on January 9, 2007. In it, ORS stated that it has not determined that a change in service providers is appropriate.

The Commission therefore grants the Motions of Duke and AT&T and holds that Mr. Tarmann's request is dismissed. First, he has created a situation that prevents Duke and AT&T from accessing and maintaining their equipment on his property because of the Trespass Notice. Next, his behavior has caused at least AT&T to consider that he poses a potential danger to their employees. Moreover, Duke continues to provide electric service to his property despite these problems, and Mr. Tarmann is free to choose an alternative to AT&T, including a wireless provider. As a result, Mr. Tarmann does

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not require the relief he states in his letter in order to obtain telecommunications services.

Under these circumstances, the principle of abandonment fails to apply. In short, Mr.

Tarmann's request for a "request/hearing" must be dismissed for lack of merit.

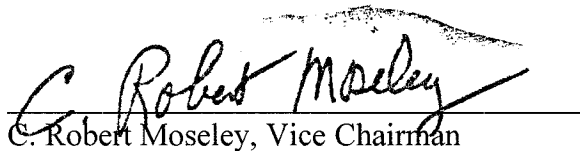
This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



G. O'Neal Hamilton, Chairman

ATTEST:



C. Robert Moseley, Vice Chairman

(SEAL)